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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2006

ANDREW ANTHONY HOLGUIN, Jr.  
P.O. Box 641  
Rancho Mirage, CA 92270

**A C C U S A T I O N**

Respiratory Care Practitioner  
License No. 15772

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 21, 1992, the Respiratory Care Board issued Respiratory Care Practitioner License No. 15772 to ANDREW ANTHONY HOLGUIN, Jr. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

". . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

". . ."

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1           7.       Section 3752 of the Code states:

2           “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
3       made to a charge of any offense which substantially relates to the qualifications, functions,  
4       or duties of a respiratory care practitioner is deemed to be a conviction within the meaning  
5       of this article. The board shall order the license suspended or revoked, or may decline to  
6       issue a license, when the time for appeal has elapsed, or the judgment of conviction has  
7       been affirmed on appeal or when an order granting probation is made suspending the  
8       imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the  
9       Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of  
10      not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
11      indictment.”

12          8.       Section 3752.5 of the Code states:

13          “For purposes of Division 1.5 (commencing with Section 475), and this chapter  
14      [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily  
15      injury shall be considered a crime substantially related to the qualifications, functions, or  
16      duties of a respiratory care practitioner.”

17          9.       California Code of Regulations, title 16, section 1399.370, states, in  
18      pertinent part:

19          “For the purposes of denial, suspension, or revocation of a license, a crime or act  
20      shall be considered to be substantially related to the qualifications, functions or duties of a  
21      respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
22      perform the functions authorized by his or her license or in a manner inconsistent with the  
23      public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
24      those involving the following:

25          “(a) Violating or attempting to violate, directly or indirectly, or assisting or abetting  
26      the violation of or conspiring to violate any provision or term of the Act.

27          “...”

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1 COST RECOVERY

2 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

3 "In any order issued in resolution of a disciplinary proceeding before the board, the  
4 board or the administrative law judge may direct any practitioner or applicant found to have committed  
5 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
6 prosecution of the case. . . ."

7 11. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
9 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
10 and service fees."

11 12. Section 3753.1 of the Code states, in pertinent part:

12 "(a) An administrative disciplinary decision imposing terms of probation may include,  
13 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
14 monitoring the probation. . . ."

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 13. Respondent is subject to disciplinary action under Code sections 3750,  
18 3750(d), 3750(g), and 3752, in that he was convicted of a crime substantially related to the  
19 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as  
20 follows:

21 A. On or about January 12, 2005, Respondent's wife observed  
22 him yelling and waving his arms at their daughter. When the wife interceded,  
23 Respondent grabbed, pushed, and attempted to choke his wife. Respondent's wife  
24 then called 911. The Riverside County Sheriff's Office Deputy who responded to  
25 the 911 call observed Respondent's daughter upset and was crying. The Deputy  
26 also observed a 4" to 5" red mark to the upper chest and neck of Respondent's  
27 wife. When questioned, Respondent's wife said Respondent's anger,

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1 psychological and drug abuse problems have caused problems in their marriage.  
2 Respondent was subsequently arrested.

3 B. On or about January 14, 2005, a two-count misdemeanor  
4 complaint was filed against Respondent in *People of the State of California v.*  
5 *Andrew Anthony Holguin*, Case No. INM153745, Superior Court of California,  
6 County of Riverside The criminal complaint charged Respondent with battery and  
7 inflicting unjustifiable physical pain and mental suffering on a child in violation of  
8 violating Penal Code sections 243(e)(1) and 273a(b), respectively.

9 C. On or about January 20, 2005, the criminal complaint was  
10 amended orally in open court to add battery in violation of Penal Code section 242.  
11 On this same date, Respondent pleaded guilty to and was convicted of battery in  
12 violation of Penal Code section 242. The Penal Code sections 243(e)(1) and  
13 273a(b) counts were dismissed. As a consequence of the conviction, Respondent  
14 was sentenced to 36 months summary probation with terms and conditions. A  
15 Criminal Protective Order was issued protecting Respondent's wife from  
16 Respondent.

## 17 SECOND CAUSE FOR DISCIPLINE

18 (Crime Involving Bodily Injury or Attempted Bodily Injury)

19 14. Respondent is further subject to disciplinary action under Code section  
20 3752.5, in that he committed a crime involving bodily injury or attempted bodily injury, as more  
21 particularly described in paragraph 13 above, which is incorporated by reference as if fully set  
22 forth herein.

## 23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
25 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

26 1. Revoking or suspending Respiratory Care Practitioner License No. 15772,  
27 issued to ANDREW ANTHONY HOLGUIN, Jr.

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2. Ordering ANDREW ANTHONY HOLGUIN, Jr. to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: October 28, 2005

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant